

Assembly Bill No. 2560

CHAPTER 266

An act to add Section 12001.6 to the Education Code, relating to education finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 2010. Filed with
Secretary of State September 24, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2560, Brownley. Education finance: federal tax credit bond volume cap.

Existing law assigns specified amounts of the state's 2009 federal tax credit bond volume cap to the State Department of Education and the California School Finance Authority, to be assigned and distributed to school districts, county offices of education, and charter schools, as specified.

This bill would authorize the department to assign and distribute the state's 2010 federal tax credit bond volume cap for qualified school construction bonds to or for the benefit of school districts and county offices of education and would authorize the California School Finance Authority to assign and distribute the state's 2010 federal tax credit bond volume cap for qualified school construction bonds to or for the benefit of charter schools, or to be further assigned and distributed to one or more issuers in the state for the benefit of charter schools, as determined by the authority. The bill would allow a charter school to apply for the federal qualified school construction bond volume cap if it meets specified criteria.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) In 2009, the United States Congress passed and the President signed into law the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) in order to provide funding and other economic stimulus to foster economic recovery among the states.

(b) The federal tax credit bond volume cap for qualified school construction bonds is included in the federal American Recovery and Reinvestment Act of 2009 and can be used to lower the cost of financing the construction, rehabilitation, or repair of a public school facility or for the acquisition of land where a school will be built.

(c) On March 17, 2010, the United States Department of the Treasury released the second allocation authority of eleven billion dollars

(\$11,000,000,000) in federal tax credit bond volume cap for the issuance of qualified school construction bonds, of which six billion six hundred million dollars (\$6,600,000,000) will be allocated directly to the states and four billion four hundred million dollars (\$4,400,000,000) will be allocated to 103 large, local educational agencies based upon the enrollment of pupils who qualify for the federal free or reduced price meal program.

(d) In order to allocate the seven hundred twenty million fifty-eight thousand dollars (\$720,058,000) in federal tax credit bond volume cap for qualified school construction bonds provided to California in 2010, this act is necessary to provide the authority to the department and the California School Finance Authority to make distributions to local educational agencies and eligible charter schools.

SEC. 2. Section 12001.6 is added to the Education Code, to read:

12001.6. (a) The Legislature hereby finds and declares that the federal tax credit bond volume cap for qualified school construction bonds designated to California by the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), together with Internal Revenue Service Notice 2010-17 issued pursuant thereto, does not constitute federal moneys, federal funds, or funds of any kind for any purpose under this code.

(b) The department is authorized to assign and distribute the state's 2010 federal tax credit bond volume cap for qualified school construction bonds to or for the benefit of school districts and county offices of education in the state.

(c) There is hereby assigned to the department six hundred fifty-one million six hundred fifty-two thousand dollars (\$651,652,000) of the state's 2010 federal tax credit bond volume cap for qualified school construction bonds.

(1) A school district or county office of education may apply for the federal tax credit bond volume cap for qualified school construction bonds if the project is funded by local voter-approved bonds issued by the school district or bond anticipation notes as authorized by Section 15150. A county office of education and a school district with an enrollment of 2,500 or less may use other forms of financing with the submission of a resolution adopted by the county board of education or governing board of the school district authorizing the issuance of the financing.

(2) A school district or county office of education that received a 2009 allocation but did not make any issuance may apply for 2010 federal tax credit bond volume cap for qualified school construction bonds nine months after the effective date of this section.

(3) A school district or county office of education that received a 2009 or 2010 federal tax credit bond volume cap for qualified school construction bond allocation from the United States Department of the Treasury is not eligible to apply.

(4) Five business days after the enactment of this legislation, the department shall post the application form on its Internet Web site.

(A) An application must be submitted via certified mail.

(B) An application shall not be postmarked until 30 business days after the enactment of this legislation.

(C) An application shall include the total number of enrolled pupils who qualify for the federal free and reduced priced meal program and the total overall pupil enrollment for the 2008–09 school year.

(5) An application not meeting the conditions set forth in paragraphs (1) and (4) shall be returned to the applicant.

(6) Applications meeting the conditions set forth in paragraphs (1) and (4) shall be accepted on a first-come-first-served basis by date of postmark. If this program is oversubscribed, order of allocation shall be established using the following criteria:

(A) First, earliest date of postmark.

(B) Second, the project for which the federal qualified school construction bond authorization will be applied received approval from the Division of the State Architect before the application was submitted.

(C) Third, the greater percentage of pupils who qualify for the federal free and reduced priced meals program and are enrolled in the applying school district or county office of education in the 2008–09 school year. The department shall certify the number of pupils who qualify and the overall enrollment and calculate the percentage to the nearest one-hundredth of 1 percent.

(7) The department shall authorize the 2010 federal tax credit bond volume cap for qualified school construction bonds no sooner than December 1, 2010.

(8) The department shall maintain a waiting list of eligible school districts and county offices of education that did not receive an allocation in the order established pursuant to paragraph (6).

(9) An applicant may not apply for more than twenty-five million dollars (\$25,000,000) of 2010 federal tax credit bond volume cap for qualified school construction bonds.

(10) A school district or county office of education applying for 2010 federal tax credit bond volume cap for qualified school construction bonds authorization shall certify in its application that it will fulfill all of the federal qualified school construction bond program requirements, including both of the following requirements:

(A) Within six months of the date of issuance, the school district or county office of education shall enter into a contract or contracts for use of an amount of bond proceeds equal to 10 percent of the authorization.

(B) Within three years of the date of issuance, the school district or county office of education shall spend 100 percent of the bond proceeds for a qualified purpose.

(11) Fifteen days after bond issuance, the school district or county office of education shall submit to the department a copy of the appropriate federal Internal Revenue Service Form, Information Return for Tax-Exempt Bonds, as confirmation of issuance.

(12) Thirty days after the completion of the expenditure the recipient shall submit a completion report to the department. The completion report

must be certified by the bond counsel of the school district or county office of education.

(13) If any or all of the federal qualified school construction bond authorizations to a school district or county office of education are not issued within six months from the date of authorization, any or all unused federal qualified school construction bond authorizations shall revert to the department. No extensions shall be provided.

(A) The department shall reallocate any remaining federal qualified school construction bond allocation to school districts or county offices of education that were eligible and applied for the authorization but did not receive an allocation.

(B) Reverted 2010 federal tax credit bond volume cap for qualified school construction bonds shall be allocated to school districts or county offices of education pursuant to the order of priority established by paragraph (6).

(C) The department shall allocate reverted federal qualified school construction bond authorizations as they are available and until all are issued.

(d) The California School Finance Authority, established pursuant to Section 17172, is authorized to assign and distribute the state's 2010 federal tax credit bond volume cap for qualified school construction bonds to or for the benefit of charter schools, or to be further assigned and distributed to one or more issuers in the state for the benefit of charter schools, as determined by the authority.

(1) There is hereby assigned to the California School Finance Authority, established pursuant to Section 17172, sixty-eight million four hundred six thousand dollars (\$68,406,000) of the state's 2010 federal tax credit bond volume cap for qualified school construction bonds, to be issued for the benefit of charter schools, or to be further assigned and distributed to one or more issuers in the state for the benefit of charter schools, as the authority shall determine.

(2) A charter school may apply for the federal qualified school construction bond volume cap if it meets all of the following criteria:

(A) The charter school is operated as, or is operated by, a nonprofit entity.

(B) The charter school has an approved charter in place that is current at the time of application and continuously through the date of bond issuance.

(C) The chartering authority certifies that the charter school is in good standing and is in compliance with the terms of its charter.

(D) The charter school provides the level of classroom-based instruction specified in paragraph (1) of subdivision (e) of Section 47612.5.

(E) The applicant has completed at least three full school years of instructional operation as a charter school as of the end of the previous school year.

(3) Five business days after the effective date of this section, the California School Finance Authority shall post the application form and fee schedule on its Internet Web site.

(4) An application shall not be postmarked until 30 business days after the effective date of this section.

(5) Following a review of all applications and a preliminary award of borrowing authority, the California School Finance Authority shall ask applicants to provide additional information as necessary for the issuance of the bonds.

(6) Applications that meet the conditions set forth in paragraph (2) shall be considered by the California School Finance Authority on a first-come-first-served basis by date of postmark. If the program is oversubscribed, staff shall present a priority list to the authority pursuant to paragraph (7).

(7) In the event that the program is oversubscribed, priority shall be assigned first to those charter schools that are best able to demonstrate to the California School Finance Authority, in its sole discretion, that they will be capable of accessing the capital markets or be privately placed with an investor. The order of allocation shall be established using the following criteria:

(A) Applicants who are able to obtain credit enhancement for a qualified school construction bond financing, including a bank letter of credit, who contribute substantial equity to a project, or who are otherwise able to obtain investment-grade credit ratings shall receive priority over other applicants.

(B) In the event that multiple applicants satisfy the criteria described in subparagraph (A), priority shall be assigned to applications with the earliest postmark date. An application that is hand delivered and does not have a postmark date will be ranked based on the time the application is received by the California School Finance Authority.

(8) Applicants shall not apply for more than twenty-five million dollars (\$25,000,000) of qualified school construction bond authorization per project.

(9) Subsequent application cycles may be considered if borrowing authority for qualified school construction bonds remains available after the initial application period.

(10) Subject to the sole discretion of the California School Finance Authority, any authorization to borrow qualified school construction bond proceeds is contingent on the issuance of the qualified school construction bonds by December 31, 2011, after which time the authorization expires and the authority may allocate the authorization to another qualified applicant.

(11) The California School Finance Authority shall allocate reverted federal qualified school construction bond authorization as it becomes available and until all of the authorization is issued.

(12) If an applicant uses any federal tax credit bond volume cap in conjunction with a bond that will serve as a local match for purposes of the Charter School Facilities Program established by Section 17078.52, the applicant, in addition to the requirements of this section, shall comply with all of the requirements of the Charter School Facilities Program.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to access federal stimulus tax credits at the earliest possible opportunity, it is necessary that this act take effect immediately.